

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

DAVID C. CORSON,

Plaintiff,

v.

// CIVIL ACTION NO. 1:09CV65  
(Judge Keeley)

PAUL A. MATTOX, JR., Secretary of  
Transportation, WV Department of  
Transportation, and ROGER PROPST,  
Superintendent of Schools Calhoun  
County Board of Education,

Defendants.

ORDER LIFTING STAY, GRANTING PLAINTIFF'S MOTION FOR LEAVE TO FILE  
BRIEF IN RESPONSE TO REPORT AND RECOMMENDATION [DKT. NO. 99],  
DENYING AS MOOT DEFENDANTS' MOTIONS TO STRIKE PLAINTIFF'S APPEAL  
[DKT. NOS. 101, 105], AND DIRECTING PARTIES  
TO CEASE FILING FURTHER MOTIONS OR BRIEFS

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On February 18, 2010, Magistrate Judge John S. Kaull issued a report and recommendation ("R&R") and directed the pro se plaintiff, David C. Corson ("Corson"), to file any objections to the R&R within fourteen days of being served with a copy of it. The Court received confirmation that Corson received delivery of the R&R on February 23, 2010. Therefore, his objections were due on or before March 9, 2010. Prior to his deadline for filing objections to the R&R, and prior to the Court's entry of a final

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order, on March 1, 2010, Corson filed a notice of appeal to the United States Court of Appeals for the Fourth Circuit. This Court stayed the case pending the resolution of Corson's appeal. (dkt. no. 92).

On June 10, 2010, the Fourth Circuit dismissed Corson's appeal for lack of jurisdiction because Corson sought to appeal an order that was "neither a final order nor an appealable interlocutory or collateral order." Corson v. Mattox, et al., No. 10-1246 (4th Cir. Jun. 10, 2010) (dkt. no. 97). The Fourth Circuit issued its formal mandate on July 10, 2010. (dkt. no. 103).

Following, the Fourth Circuit's dismissal of Corson's untimely appeal, he moved this Court for leave to file a brief in response to Magistrate Judge Kaull's R&R (dkt. no. 99), and attached the proposed brief to his motion. Following the filing of this motion, the defendant, Paul A. Mattox ("Mattox"), filed a response (dkt. no. 100), and moved to strike Corson's appeal (dkt. no. 101). On July 8, 2010, the defendant, Roger Propst ("Propst"), also moved to strike Corson's appeal (dkt. no. 105).

In accordance with the Court's prior Order (dkt. no. 92), it **LIFTS** the stay in this case. Although Corson provides no excuse or

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explanation for his failure to file timely objections to Magistrate Judge Kaull's R&R, the Fourth Circuit has previously directed district courts to construe untimely appeals as objections to R&Rs. See Young v. Butler, 81 F.3d 153 (table), 1996 WL 145221 (4th Cir. 1996). Therefore, because Corson filed a notice of appeal prior to his deadline for filing objections to the R&R, the Court **GRANTS** Corson's motion for leave to file a response to Magistrate Judge Kaull's R&R (dkt. no. 99), and directs the Clerk to file his proposed brief. Accordingly, the Court **DENIES AS MOOT** Mattox and Propst's motions to strike Corson's appeal (dkt. nos. 101, 105), and further **DIRECTS** the parties to cease filing any additional motions or briefs until further notice.

It is so **ORDERED**.

The Court directs the Clerk to transmit copies of this Order to counsel of record and to mail a copy to the pro se plaintiff, certified mail, return receipt requested.

DATED: July 21, 2010.

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/s/ Irene M. Keeley  
IRENE M. KEELEY  
UNITED STATES DISTRICT JUDGE